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Remarks/ Arguments

In response to the Office Action mailed April 3, 2007, Applicants respectfully request that the Examiner reconsider the rejections of the claims.

Claims 1-5, 7-12, and 14-19 remain.

Claims 1, 8, and 15 are being amended.

Claims 1-5, 7-12, and 14-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *McIlroy et al.* (U.S. Patent 5,953,704) (hereinafter "the *McIlroy* reference"). Applicant respectfully traverses these rejections.

Anticipation rejections under 35 U.S.C. § 102(e) require identity of invention. In other words, each and every feature of each and every claim rejected as anticipated must be shown in a single prior art reference.

Applicant respectfully submits that the *McIlroy* reference does not teach the creation of a *static* data structure including a first code uniquely identifying a protocol grouping assigning priorities to one or more protocol choices based on a range of one or more disease variable values, a second code identifying a protocol choice selected from the protocol grouping and a justification for selecting the protocol choice, a third code identifying each procedure, diagnostic test, or treatment performed pursuant to the protocol choice and a justification for selecting each respective procedure, diagnostic test, or treatment, and a fourth code defining a charge code for all procedures, diagnostic tests, and treatments performed.

In contrast, the system disclosed in the *McIlroy* reference uses a dynamic decision tree-based system in which a series of if-then questions are answered, which in turn leads to another series of similar if-then questions. The codes discussed in this reference refer to the choices made in this process, and can document what was done and why. The process disclosed is applicable for hospital based problems and

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emergency room medicine, where it is an on-going real time event with evolving choices.

In contrast, the present claimed system utilizes "static" artificial intelligence, in which the critical decision making variables are placed once, and what emerges are the appropriate recommendations for diagnostics and treatments. This system is more applicable for the treatment of chronic diseases such as cancer, diabetes, asthma, etc. Moreover, the use of static artificial intelligence supports Insurance pre-authorization, and transfer of codes for the billing process (in other words, the ability to undergo a utilization check showing the claim is allowed, and meets the payer's criteria for appropriateness and coverage).

In particular, the present claimed invention is based on 2 sets of infrastructures, which are not taught by the *McIlroy* reference. The first infrastructure is based on the scientific appropriateness of these chronic disease diagnostics and treatments, based on agreed upon algorithms of critical decision making variables. In the static data structure, this includes the protocol grouping, the protocol choice, and treatment and justification information. The second infrastructure is based on the payer's (insurance company, Medicare, etc.) algorithms and coverage. Advantageously, the resulting payer authorization (charge) code not only allows for the provision of cost effective medicine, but also provide a record (electronic medical record) of patient disease activities, which can be maintained in the insurance company database.

Actions such as preauthorization are not possible with the dynamic system shown in the *McIlroy* reference, since variables are constantly being changed as new choices are being made during execution of the decision tree.

Given the substantial differences between Claims 1-5, 7-12, and 14-19, and the teachings of the *McIlroy* reference, Applicant respectfully submits that the rejections of Claims 1-5, 7-12, and 14-19 should be withdrawn.

No new matter has been added; the claims have been merely amended to more particularly claim the subject matter Applicants believe is inventive. Applicants

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respectfully submit that the Claims as they now stand are patentably distinct over the art cited during the prosecution thereof.


Applicant respectfully requests a First Month Extension of Time to File this Response. Enclosed with this response is Form PTO/SB/22 with Extension Fees in the amount of \$60.

With the addition of no new claims, no additional filing fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account Number 20-0821 of Thompson & Knight LLP.

If the Examiner has any questions or comments concerning this paper or the present application in general, the Examiner is invited to call the undersigned at (214) 969 - 1749.

Respectfully submitted,

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